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Supreme Court U.S.
FILED

05-590 NOV - 3 2005
No. _____

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In The
Supreme Court of the United States

HERMAN ASTER, Petitioner,

vs.

ZDENKA ASTER, *Respondent.*

On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California Sixth Appellate District.

PETITION FOR WRIT OF CERTIORARI

The Petitioner
HERMAN ASTER,
2167 Riordan Drive
San Jose, California, 95130
Telephone (408) 378-1457

QUESTION PRESENTED FOR REVIEW

The Security Accounts and IBM stock held in Community Property were ordered in Judgment of Dissolution to be divided in kind. (11,19, App. 3-5) Dispute ensued over interpretation of "in kind".

Petitioner's position is to divide securities equally while retaining community property status for both parties. Respondent's position is to divide in separate names and so reduce the asset for the longer surviving party.

The question: Should the Court of Appeals endorse position of the Respondent without any compensation to petitioner and in perceived compliance with divorce law violate protections granted in United Nations Universal Declaration of Human Rights.

PARTIES

The parties are
petitioner Herman Aster and
respondent Zdenka Aster represented by
attorney Dolly Ares, BN 87786,
514 Monterey Street, Hollister, CA 95023.
Phone: 831-637-6775, Fax 831-637-6779

CITATIONS OF ORDERS AND OPINIONS

Appendix:	Date:	
Judgment of dissolution	01/09/2001	1
Denials, orders and opinions filed in cases 1-99-FL086124 in Superior Court, H022230, H027461 in Court of Appeals, S107532, S135545 in Supreme California 02-823, 05-125 in Supreme Court of US	2001-2005	
Finding and Order After Hearing	08/10/2004	6
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Supreme court CA review denied	08/31/2005	11

STATEMENT ON BASIS FOR JURISDICTION

In Court of Appeals:

Appellate Opinion entered June 13, 2005

Petition for Rehearing denied June 28, 2005

In Supreme Court of California:

Petition for Review denied August 31, 2005

Highest Court of the country is in jurisdiction where protections under United Nations Universal Declaration of Human Rights are at issue.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United Nations Universal Declaration of Humane Rights:

Article 12 - The right to own property alone as well as in association with others.

Article 25 - Protection in advanced age

Article 30 - Principal protection in signatory countries
(App. 12)

STATEMENT OF THE CASE

This appeal is in defense of petitioner's right to keep his retirement asset of securities held in community property in the case he is the longer surviving party. California's No Fault Divorce Law fails to protect, taking no consideration of length of marriage, marital contract or advanced age.

The Appellate Court glean from appellate brief "Herman ... seeks recognition of ... right to survivorship benefit ... but does not explain how this right was compromised in present order" (App. 9) is not substantiated. Argued in details in Opening Brief, there was no Response Brief filed nor responsive oral argument presented. At oral arguments the Appellate Court had no questions on any possible ambiguity while ignored relevant evidence. The Order is affirmed not excluding even the first paragraph violating petitioner's First Amendment to US Constitution granted right to communicate with his financial institution. Detailed petition for Rehearing (App. 10) restating facts was denied.

REASONS FOR GRANTING THE PETITION

California's No Fault Divorce Law applied to advanced age marriage proved its capacity to violate petitioner's human rights. Failing to argue its immorality, defective application or even presence of special circumstances in preceding appeals on all levels of California courts the petitioner is now loosing up to half of his retirement assets. Only this court can intervene.

CONCLUSION

The petitioner begs The Supreme Court of United States to consider review of No Fault Divorce Law and affirm his right to survivorship benefit of his, in community property held, assets or to compensation for such assets when divided to separate names without his consent.

Respectfully submitted,

San Jose October 24, 2005

Herman Aster

JUDGMENT OF DISSOLUTION

Trial Court: Superior Court of California
Santa Clara County, Dpt. 75
Case: 1-99-FL086124
Trial Judge: Honorable Jamie Jacobs-May
Filled: January 9, 2001

Marriage of Aster, Case No. 1-99-FL086124

1. Both parties waive their right to receive spousal support, and the Court's jurisdiction to award support to either party is hereby terminated.
2. Each party shall pay his or her own attorney fees and costs through date of trial.
3. Respondent shall reimburse Petitioner for one-half of sum of \$475.00, representing the appraisal fee of Gene Hubbard.
4. The IRA/AARP account in Respondent's name in the approximate amount of \$62,515 is awarded to Respondent as his sole and separate property.
5. The IRA/AARP account in Petitioner's name in the approximate amount of \$62,521 is awarded to Petitioner as her sole and separate property.
6. Elizabeth Strassen shall be retained by the parties to prepare Qualified Domestic Relation Orders (QDROs) on the following accounts and each party shall pay one-half of the cost thereof:
 - a. 401K account with Franklin in Respondent's name in the approximate amount of \$134,877.

- b. 401K account with UBS in Respondent's name in approximate amount of \$92,604.
- c. 401K account with Putnam in Petitioner's name. The amount at the date of separation with accrued interest shall be divided and Petitioner shall be awarded her separate property interest representing any contributions plus interest made since date of separation to the date of division.

7. The real property located at 2167 Riordan Drive, San Jose, California shall be awarded to Respondent as his sole and separate property. Respondent shall pay to Petitioner one-half of the sum of \$467,000, which is the agreed upon value of the property.

8. Rental Value: Respondent shall pay to Petitioner the sum of \$11,450, representing one-half of the rental value of real property since date of separation to the date of trial.

9. The Respondent presented evidence regarding two annuities consisting of Zurich Life Insurance Company policy nos. 7,262.019 and 7,299.583. Respondent presented evidence to support his position that the value of the annuities was significant and almost equal to the value of the death benefit. After testimony, the Court made the following tentative ruling: The annuities are community property. The Court disagrees with the evidence presented by the Respondent and makes the following tentative ruling: The annuities shall be cashed in or the parties shall share the annuity benefits on an ongoing basis. If the Petitioner dies, the Respondent is entitled to full amount of the benefits. If the respondent dies, the Petitioner is entitled to full amount of the benefits. After the tentative ruling, the Respondent indicated to the Court that he wished to keep both annuities and that he would pay Petitioner her interest in the annuities. ~~The parties then entered into the following stipulation on record:~~ ^{H.A.}

Respondent is awarded any and all benefits from said annuities during his lifetime. Said annuities are in Respondent's name and Respondent shall not change any of the terms of said policies including, but not limited to, the death benefit portion of the

App. 3

policies. Respondent shall pay to Petitioner as and for her interest in said policies the sum of \$172,500.

10. Bank accounts

- a. The Wells Fargo checking account No. 0572-202397 in approximate amount of \$18,887, as well as First Albany Bank account No. 1237-0141 in approximate amount of \$30,771 shall be divided equally between the parties.
- b. The Downey Bank account no. 3996013300 and Citibank account no. 40008550531 have been previously divided between the parties.
- c. The Valley Credit Union account no. 0000026968 in the amount of \$628.25 shall be equally divided between the parties.

11. Security Accounts: The following security accounts shall be divided in kind between the parties:

- a. BP/PB account, consisting of 3,000 shares, approximate value: \$43,687.
- b. Bristol Myers account Consisting of 1600 shares, approximate value of \$85,800
- c. IBM account no. 88550 and 90115 consisting of 1,608 shares, approximate value \$201,402.
- d. Exxon Mobil account consisting of 400 shares, approximate value \$35,850.
- e. Phillip Morris account consisting of 1,800 shares, approximate value \$48,037.
- f. Paine Webber account, consisting of 3200 shares of HB and 3200 shares of PSCO, with an approximate value of \$145,453.

12. Swiss accounts: Petitioner presented evidence regarding Swiss accounts consisting of investment accounts PO280671.0, PO280671.1, as well as an investment account. Petitioner alleged that on June 25, approximately one

month prior separation, the investment account contained net asset of 136631 Swiss francs. Approximately one month after separation, the investment account was depleted. Respondent alleged that said funds had been used to purchase the second annuity or that he had no knowledge of what happened to the funds. The Court found that Petitioner had the burden of proving misappropriation of the funds by the Respondent and that Petitioner failed to carry her burden of proof. The Court did not preclude any remedies under Family Code Section 2120 et seq. which might be available to Petitioner subject to the statute of limitations therein.

13. The IBM pension is awarded to Respondent as his sole and separate property.

14. The parties agree that there was a South Africa checking account No. 001513753 and Escom bond R200,000. The parties entered into a Stipulation as follows: Respondent set value of said account in the amount of \$5,000. Petitioner agreed to pay to Respondent the sum of \$5,000, representing any and all interest that Respondent may have in the South Africa investment account. The South African account of R200,000 shall be awarded to Petitioner as her sole and separate property. Respondent shall do everything necessary to transfer said account to Petitioner's name.

15. The parties had an investment consisting of 100 gold Kruggerands. Respondent shall deliver to Petitioner one-half of said Kruggerands.

16. Petitioner is awarded the 1993 Honda Civic at the agreed upon value of \$4,000; Respondent is awarded the 1987 Honda Civic at agreed upon value of \$500.00.

17. House hold Furniture & Furnishings: Respondent agreed to return to Petitioner the following: Main bedroom: one picture by the door and one alarm clock; Zdenka's room: Sewing machine

and pictures which were wife's separate property; Sunroom: one-half of ornamental plates; Living room: One floor lamp, one wall clock from Africa, two pictures above couch, three ornamental plates, one-half of African and Czech ornaments, books and dictionaries, one-half of the audio and video tapes; Dining room: one picture above cabinet, four pieces of crystal; Kitchen: one clock radio, in house grille.

The parties have divided the family photo albums and Respondent has returned to Petitioner the family tree book. Respondent shall pay to Petitioner the sum of \$1,000 as an agreed upon amount. All other household furniture and furnishing are awarded to Respondent as his sole and separate property.

18. **Premarital Contract:** Respondent presented evidence to the Court regarding an alleged premarital contract which he alleged was breached by the Petitioner and that he was therefore entitled to damages. Petitioner alleged that there was no premarital contract and that the alleged contract was in fact an agreement with the Catholic Church. After evidence was submitted, the Court ruled that the Respondent had no right to money damages for breach of the marriage contract.

19. **IBM stock:** Respondent alleged that IBM stock accounts 88550 and 90115 were his separate property. After evidence was presented, the Court ruled that said accounts were quasi-community property and were to be divided equally.

20. The equalizing payment payable by Respondent to Petitioner is payable forthwith and earns interest at the legal rate 10% as of date of trial, October 4, 2000.

DATED: 12/11/00

"s/ Justice May"
JUDGE OF THE SUPERIOR COURT

Marriage of Aster

Judgment of dissolution

FINDINGS AND ORDER AFTER HEARING

Trial Court: Superior Court of California Santa Clara Co.
Case: 1-99-FL086124
Heard: Hon. Margaret Johnson, August 2, 2004
Filed: August 10, 2004

Findings and Order After Hearing, continued, Page 2:

Other Orders:

1. Respondent, Herman Aster, is ordered not to communicate with Bank of New York and Equiserve regarding the stock seeking to be transferred, other than to deliver to Bank of New York and Equiserve the stock certificates as set forth herein below.
2. Within thirty (30) days or by September 1, 2004, Respondent, Herman Aster, shall deliver to Equiserve stock certificate numbers NYU30709 representing 1200 common shares of Altria Group stock, and certificate number NYU608447 representing 600 shares of Altria Inc. stock.
3. Within thirty (30) days or by September 1, 2004, Respondent, Herman Aster, shall deliver to Equiserve the following certificates, all of which are in his possession: Certificate number 407634 representing 200 shares of Exxon; Certificate number 115115 representing 200 shares of Exxon; and Certificate number 15432 representing 400 shares of Exxon
4. Within thirty (30) days or by September 1, 2004, Respondent, Herman Aster, shall deliver to Dolly Ares' law office at 151 W. St. James Street, San Jose, CA, 50 Kuggerrands, or pay the equivalent value, to be determined at the next court hearing out of an account to be determined at the next court hearing.
5. Within thirty (30) days or by September 1, 2004, Respondent, Herman Aster, shall disclose to petitioner where the funds that were in the following accounts have been transferred to and shall provide Petitioner with the name,

address and account numbers where each of said funds were transferred:

IRA or 401(k) account with Franklin;

IRA or 401(k) account with UBS;

6. Respondent, Herman Aster, is hereby directed to immediately contact the entities into which the accounts set forth in paragraph 5 have been transferred and instruct the entities to equally divide the accounts and transfer to Petitioner one-half of the amounts in each of the accounts.
7. Respondent's failure to comply with the court orders set forth hereinabove shall be considered a continuing contempt by the Respondent.
8. This matter is continued to September 7, 2004 at 1:30 p.m. in Department 75 for further hearing.

APPELLATE OPINION

NOT TO BE PUBLISHED FILED Jun 13 2005
IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SIXTH APPELLATE DISTRICT

In re Marriage of ZDENKA and HERMAN ASTER
ZDENKA ASTER Respondent, HERMAN ASTER Appellant.
H027866 (Santa Clara County Super. Ct. No. FL086124)

Appellant Herman Aster filed this appeal in propria persona to challenge a family court order directing him to relinquished control of stocks and funds that had been awarded to his former wife, Zdenka Aster. We will affirm the order.

Background

In judgment entered in January 2001, the family court granted dissolution of the parties' marriage and divided their assets, including stock and other securities. The court awarded the parties' house in San Jose to Herman, but Herman was required to pay Zdenka \$467,000, of which the parties agreed was one-half the value of the property.

In March 2004 Zdenka moved for the sale of the family residence. In her accompanying declaration she stated that Herman had "failed to cooperate in the division of any property pursuant to the Judgment." Herman had, for example, refused to turn over original stock certificates that were necessary to divide the securities accounts. Zdenka asked the court for an order that the division take place without the stock certificates and that the house be sold so that she could collect the money Herman owed her. Herman opposed the motion and proposed instead that a lien on the house be released and that he take out a \$233,500 loan on the property, to be paid to Zdenka upon transfer of title. On April 20, 2004, the court filed an order in which it found that Herman owed Zdenka \$576,752.79, including interest through April 30, 2004. Herman was allowed 30 days to pay Zdenka; if he failed to do so, the house would be sold in order to satisfy the judgment. Herman unsuccessfully appealed from that order. (*In re Marriage of Aster*, H027461, unpub.)

On August 10, 2004 the court filed a new order, from which Herman now appeals. In that order the court directed him to relinquish specified stock certificates, to disclose to Zdenka where he had transferred certain funds in two IRA or 401(K) accounts, and to instruct the custodian of those funds to divide the accounts equally and give Zdenka half of the proceeds.

Discussion

Herman offers no legally or factually supported ground for concluding that the August 10, 2004 order was erroneous. He asserts facts that are not in record, (Herman alleges, for example,

that Zdenka “raided liquid family assets” before they separated.) a “conspiracy of attorneys on the case” and the “persecution” of him through the order, and an attempt by Zdenka to extort assets from him. He does not provide a copy of the pleadings leading to challenged order, (The order indicates that a motion or order to show cause was filed on June 24, 2004. The only motion in the record before us, however, is one that was filed March 2.) nor we have a reporter’s transcript, so we are unable to understand the problem the superior court was attempting to resolve. We glean from Herman’s appellate brief that he seeks recognition of his “right to survivorship benefit to community property,” but he does not explain how this “right” was compromised in present order. He also ask this court to instruct family court judge to “deduct half value of assets already divided from compensatory payment of \$233,500 for house as per Article 7 of the Judgment [of Dissolution],” but this appears to be request directed at previous order, which is not now before us. He also challenges a provision in the present order that he not “communicate with Bank of New York and Equiserve regarding the stock ... to be transferred, other than to deliver to Bank of New York and Equiserve the stock certificates,” but he does not provide argument for the bare assertion that this directive violated his “constitutional right.”

Herman offers no other argument, facts, or authority on which this court could find error in family court’s order.

Disposition

The order is affirmed.

ELIA, J. WE CONCUR: RUSHING, P.J. PREMO, J.

In re Marriage of Aster H027461

PETITION FOR REHEARING

Court of Appeals CA Sixth Appellate District
H027866 (SCC Superior Court FL 086124)

The Appellant petitions for rehearing on the grounds of Omission or Misstatement of Issue or Fact.

The Court of Appeals is affirming the order on the ground of petitioner's failure of "relinquishing control of stocks and funds". Detailed arguments raised in Opening Brief are ignored.

Misstatements and omissions:

- [Herman] required to pay Zdenka \$467,000 for house
- had failed to cooperate in division of **any** property
- refuses to turn over original stock certificates
- unsuccessfully appealed H027461
- in matter of extortion of 401K accounts
- asserting conspiracy in [Zdenka's] raid on family assets
- nature of claim to survivorship benefit
- objections to violation of constitutional rights

There is potential for more to appear in properly conducted briefing and oral arguments.

It is respondent's burden to augment appellate record if deemed to be inadequate, participate in briefing and argue to resolution. None satisfied, the Court sided with absent respondent and turned blind eye even to principal issue of appellant's right to survivorship benefit in community property while denying him opportunity to argue for himself.

The Appellant begs the Court to reconsider its opinion, compel the Respondent to, at least, appear on oral arguments and grant rehearing or set aside the appealed from Superior Court Order.

San Jose June 20, 2005.

"s/ Herman Aster"

Court of Appeal, Sixth Appellate District No. H027866
S135545

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re Marriage of ZDENKA AND HERMAN ASTER

ZDENKA ASTER, Respondent,

v.

HERMAN ASTER, Appellant

Petition for review DENIED.

Supreme Court
FILED
AUG 31 2005
Frederick K. Ohlrick
Clerk - Deputy

“s/ George “

Chief Justice

**UNITED NATIONS
UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Article 17-1

Everyone has the right to own property **alone** as well as in **association with others**.

Article 25-1

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in event of unemployment, sickness, disability, widowhood, **old age** or lack of livelihood in circumstances beyond his control.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at destruction of any of the rights and freedoms set forth herein.